

Application No.: 10/698,148
Filing Date: October 31, 2003

REMARKS

The Applicants thank the Examiner for his remarks and careful consideration of Applicants' assertions during the February 17th Examiner Interview. The Applicants note that the present Office Action was officially mailed after that interview. However, after discussion with the Examiner on February 23rd, it appears that the present Office Action was issued several weeks or more before the interview of the 17th even though it was eventually officially mailed on February 19th, after the interview of the 17th. Because of the unusual chronology, the Applicants confirmed with the Examiner during the February 23rd Examiner Interview that the agreements and understandings of the February 17th Examiner Interview were still valid and considered by the Examiner to be the present status quo, as opposed to the assertions of the February 19th Office Action (hereinafter, the "Office Action"). Thus, the remainder of the present Amendment responds to the Office Action while addressing arguments made during the Examiner Interview before the mailing date of the Office Action.

Status of the Claims

Claims 43-50, 52, 54-61, and 72-73 stand pending. Claims 51 and 53 were previously cancelled. Claims 62-71 and 74-75 have been previously withdrawn. Claim 43 has been amended as noted above. Written description support for the amendment can be found, for example, in Figure 46B and paragraphs [0362] and [0363] of the specification as published under U.S. Pub. No. 2004/0092892 A1. No new matter has been added.

Summary of the Office Action

In the Office Action, Claims 43-50, 52, 54-61, and 72-73 stand rejected. Claims 43-50, 52, 54-61, and 72-73 are rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Pat. Pub. No. 2004/0039452 A1 to Bessler in view of U.S. Pat. No. 6,254,642 to Taylor. Claims 43-50, 52, 54-61, and 72-73 are rejected as unpatentable over U.S. Pat. Pub. No. 2004/0082963 A1 to Gannoe et al. in view of Taylor.

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Rejections under 35 U.S.C. § 103(a)

Applicants have amended Claim 43 as noted above and discussed generally in the interview. Applicants submit that the references cited by the Examiner in the rejection, even when combined, do not teach or suggest each and every element of independent Claim 43. For example, Taylor's attachment spikes do not have a transversely reduced or enlarged configuration; rather each simply has barbs with a sharp tip that extends radially. Taylor simply fails to teach one configuration while passing through tissue and another once through the tissue.

However, the Applicants reiterate that the question of whether Taylor teaches or suggests the elements of Claim 43 does not even need to be reached. As discussed in multiple previous responses and as emphasized during the interview, it is wholly improper to combine Taylor's invasive spike attachment technology with Bessler's noninvasive expanding stent attachment technology or with Gannoe's plication attachment technique. Each of these references teach away from the other. For example, Bessler teaches a noninvasive attachment that would be wholly destroyed by Taylor's ring of piercing barbs. Moreover, Gannoe's plication seeks to anchor by folding tissue, the folds of which would then substantially parallel to the direction of Taylor's barbs, creating inoperability with Taylor.

The discussion of the inappropriateness of the combination is part of the present Application's evidence of record, including the Factual Declaration of Christopher Thompson, M.D. submitted November 21, 2008.

Dependent/Withdrawn Claims

Applicants note that Claims 44-50, 52, 54-61, and 72-73 depend from Claim 43 or claims depending thereof and recite all of the elements of Claim 43 as well as additional distinguishing features. Applicants submit that these claims are also in condition for allowance. Furthermore, withdrawn Claims 64-71 and 74-75 also depend from Claim 43 or claims depending thereof and recite all of the elements of Claim 43 as well as additional distinguishing features. Applicants request that these claims be reinstated into the application should Claim 43 be found allowable.

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No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

Co-Pending Applications of Assignee

Applicants wish to draw the Examiner's attention to the following co-pending applications of the present application's assignee, which are of record in previous Information Disclosure Statements.

Serial Number	Title	Filed
10/998,424	Apparatus and Methods for Treatment of Morbid Obesity	11/29/2004
11/025,364	Devices and Methods for Treating Morbid Obesity	12/29/2004
11/124,634	Devices and Methods for Attachment of an Endolumenal Gastrointestinal Implant	05/05/2005
11/431,040	Methods of Transmural Attachment in the Gastrointestinal System	05/09/2006
11/430,677	Attachment System for Transmural Attachment at the Gastroesophageal Junction	05/09/2006
11/431,054	Methods of Adjusting Therapy in a Patient Having an Endolumenal Bypass to Treat Obesity	05/09/2006
11/400,724	Devices and Methods for Endolumenal Gastrointestinal Bypass	04/07/2006
11/430,275	Everting Gastrointestinal Sleeve	05/08/2006
11/430,278	Attachment Cuff for Gastrointestinal Implant	05/08/2006
11/430,274	Cuff and Sleeve System for Gastrointestinal Bypass	05/08/2006

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Serial Number	Title	Filed
11/429,934	Gastrointestinal Implant System	05/08/2006
11/548,605	Devices and Methods for Endolumenal Gastrointestinal Bypass	10/11/2006
10/903,255	Gastrointestinal Sleeve Device and Methods for Treatment of Morbid Obesity;	07/30/2004
11/236,212	Devices and Methods for Attachment of a Gastrointestinal Sleeve	09/27/2005
11/123,889	Devices and Methods for Gastric Surgery	05/06/2005
11/125,820	Suction Assisted Tissue Plication Device and Method of Use	05/10/2005
11/789,561	Methods and Devices for Gastrointestinal Stimulation	04/25/2007
11/861,156	Toposcopic Access and Delivery Devices	09/25/2007
11/861,187	Toposcopic Methods and Devices for Delivering an Elongate Sleeve Having Axially Compressed and Elongate Configurations	09/25/2007
11/861,172	Methods for Toposcopic Sleeve Delivery	09/25/2007
12/136,003	Methods and Devices for Intragastic Support of Functional or Prosthetic Gastrointestinal Devices	06/09/2008
12/135,989	Gastrointestinal Bypass Sleeve as an Adjunct to Bariatric Surgery	06/09/2008
12/137,473	Expandable Fastener System with Flower Petal-Shaped Retention Elements	06/11/2008
12/137,475	Endoscopic Delivery Devices and Methods	06/11/2008

Applicants direct the Examiner to the above tabulated references, and to their associated prosecution history, for the Examiner to consider, now and in the future, whether the subject matter claimed, as well as the associated prosecution history, may be relevant to the patentability of the present application (e.g., for reasons of obviousness-type double patenting). Applicants believe that the Examiner has access to the patents and pending applications and the file histories through the Patent Office (e.g., the IFW system). Accordingly, Applicants have not provided a copy of the references or the file histories, but would be happy to do so now or in the future, should the Examiner so request.

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CONCLUSION

Applicants respectfully submit that the claims are in condition for allowance in view of the above remarks. Any remarks in support of patentability of one claim, however, should not be imputed to any other claim, even if similar terminology is used. Additionally, any remarks referring to only a portion of a claim should not be understood to base patentability on that portion; rather, patentability must rest on each claim taken as a whole. Applicants respectfully traverse each of the Examiner's rejections and each of the Examiner's assertions regarding what the prior art shows or teaches, even if not expressly discussed herein.

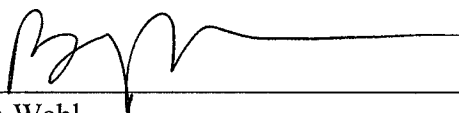
The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claim and drawings in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call the Applicants' attorney in order to resolve such issue promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 3/16/09

By: 

Bryan Wahl
Registration No. 58,878
Attorney of Record
Customer No. 20995
(949) 760-0404

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